

## LABOUR DEPARTMENT

The 7th May, 1986

No. 9/7/86/6Lab./3346.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s The Administrator, Municipal Committee, Rohtak,

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 176 of 1985

between

SHRI SOM DUTT, WORKMAN AND THE MANAGEMENT OF M/S THE ADMINISTRATOR, MUNICIPAL COMMITTEE, ROHTAK

Present—

Shri M.C. Bhardwaj, A.R. for the workman.

Shri Ram Singh Joshi, A.R. for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Som Dutt and the management of M/s The Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—*vide Haryana Government Gazette Notification No. 42360-65, dated 15th October, 1985* :—

Whether the termination of services of Shri Som Dutt is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Octroi Moharror since 13th June, 1974 and has been performing his duties since to the entire satisfaction of the respondent, but the respondent chose to terminate his services unlawfully and abruptly on 18th January, 1985 and that his termination amounts to "retrenchment" as defined in section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), because the same was brought about without payment of any retrenchment compensation or prior notice as envisaged under section 25F of the said Act. So, the order of termination is liable to be set aside.

3. In the reply filed by the respondent, it is admitted that the petitioner was employed on the date alleged but it is asserted that he was employed on daily wages in leave arrangement of Octroi Moharror. It is further alleged that all employees of the Municipal Committees in the State of Haryana are governed by the Punjab Civil Services Rules and so, the provisions of the Industrial Disputes Act, 1947, will not be applicable in this case. *Inter alia* it is also alleged that the respondent is not an "industry" as defined in section 2 (j) of the said Act and so also the reference is bad in law.

4. On the pleadings of the parties, the following issues were settled for decision on 31st January, 1986:—

- (1) Whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947?
- (2) Whether the termination of services of Shri Som Dutt is justified and in order? If not, to what relief is he entitled?

5. The petitioner himself appeared as WW-1 and also examined WW-2 Shri Tilak Raj, Establishment Clerk of the respondent Committee. The respondent examined MW-1 Shri Ram Singh Joshi, its office Superintendent.

6. Heard.

Issue No. 1:

7. To buttress this plea, the respondent has drawn my attention to Annexure of the Written Statement copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education Haryana, is not an "industry", because its employees are governed by the provisions of

Punjab Civil Services Rules. Taking a cue from this letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Services Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947, will not apply. This contention is absolutely unfounded. In the *Bangalore Water Supply and Sewerage Board case reported in 1978 Lab. I.C. 467* a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope, sweep and ambit of the term "industry" as defined in section 2 (j) of the said Act. Their Lordships were endorsing the law laid down in *Nagpur Municipality reported in AIR 1960 S.C. 675* observed in para 67 of the judgement as under :—

"Shri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in Nagpur Municipality (AIR 1960 SC 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, word and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of services to the community etc., as implied inarticulately in the concept of "industry", we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well known canons of construction exert real pressure on our judgement. And, in this latter process, next to Banerji (AIR 1953 SC 58) comes Corporation of Nagpur (AIR 1960 SC 675) which spreads the canvas wide and illumines the expression analogous to trade or business' although it comes a few days after Hospital Mazdoor Sabha (AIR 1960 SC 610) decided by the same bench."

8. These observations of the Supreme Court clinch the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality especially its administrative wing falls within the ambit of the term "industry" as defined in section 2 (j) of the said Act and as such, the provisions of the Industrial Disputes Act, 1947, will apply in this case. So this issue is answered against the management.

#### Issue No. 2:

9. It is not denied by the respondent that the petitioner was employed on 13th June, 1974, though it is asserted that he was employed on daily wages in leave arrangement of Octroi Moharror. Shri Joshi, office Superintendent of the respondent stated that there are about 60—70 Octroi Moharrors in the Committee and that the petitioner worked continuously since the date of appointment. This practice of employing persons on daily wages or *ad hoc* basis for long periods squarely falls within the ambit of term unfair labour practice as detailed in Schedule 5th appended to section 2(ra) of the Industrial Disputes Act, 1947. In a recent authority rendered by the Hon'ble Supreme Court of India reported in 1985 *Lab.I.C. 1733 between H. D. Singh v. Reserve Bank of India*. Strong observations were passed against the practice of employing workman on casual basis for long periods with intention to deprive them from the benefits envisaged in the provisions of the Industrial Disputes Act, 1947.

10. In the present case, it is most surprising that the respondent Committee chose to employ the petitioner for more than ten long years and that too as a daily wager. In the authority under reference the workman was employed on daily wages of Rs. 3 and he used to be called to do work at the whim and fancy of the respondent Reserve Bank of India. The Hon'ble Supreme Court giving all benefits to the workman of previous service and back wages passed scathing observations against the Reserve Bank of India. In the present case, the scales are loaded more against the respondent, because the petitioner has been in the employment of the respondent for more than ten long years, irrespective of the fact that he was being treated as a daily wager by the respondent. So, his termination squarely falls within the ambit of term "retrenchment" as defined in section 2 (oo) of the said Act and squarely offends the provisions of section 25F of the said Act, because no retrenchment compensation or prior notice was given to him. So, the order of termination is set aside and the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated 14th March, 1986.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bahadurgarh.

Endst. No. 176-85/539, dated 4th April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bahadurgarh.